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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re J.B., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

C.B.,

Defendant and Appellant.

G040774

(Super. Ct. No. DP014207)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, John C.
Gastelum, Judge. Affirmed.

Grace Clark, under appointment by the Court of Appeal, for Defendant and
Appellant.

Benjamin P. de Mayo, County Counsel, Karen L. Christensen, and Debbie
Torrez, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

C.B. (Mother) appeals from an order summarily denying her Welfare and Institutions Code section 388 modification petition.¹ Her son, J.B., was removed from her care over two years ago. The juvenile court determined Mother's recent efforts at addressing her drug addiction was only evidence she was in the beginning stages of changing her circumstances. Mother asserts she presented prima facie evidence her circumstances had changed and returning J.B. to her care or extending reunification services was in his best interests. We disagree and affirm the court's order.

I

In October 2006, then three-year-old J.B. was taken into protective custody after police officers found methamphetamine in Mother's hotel room within his reach. Mother had left J.B. in the room with two neighbors, whom she had just met. Mother was arrested. J.B. was transported to Orangewood Children's Home (Orangewood). It was reported he was a clean, healthy, and active child. He stated he did not want to go home. The court ordered J.B. detained.

Mother had four children who were previously removed from her care for drug-related allegations. Mother's parental rights were terminated as to all four children. Mother admitted two of the four children were detained at birth because they tested positive for drugs. Mother stated that at the time she had nowhere to live and the children were better off detained than being "on the streets" with her. She claimed to be homeless, but sober throughout her pregnancy with J.B.

Mother maintained the methamphetamine found in her hotel room was sugar from licorice she purchased from a liquor store. She admitted to a lengthy history of drug use, but claimed it had been resolved and she had been sober for two years. She started using drugs when she was 13 years old, and she had tried all kinds of drugs, but her favorite was methamphetamine. She did not graduate from high school, and she had

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

an arrest history. Mother stated that after 20 years of addiction, she sought treatment from Heritage House in Costa Mesa for six months. She then lived at Sober Living Heritage House Village for one year. Mother claimed she did not complete the program because she missed one out of 12 aftercare meetings. She stated, ““drug addiction is a bad thing. I need my baby. He’s keeping me together. I am sober for him. People make mistake[s] and they change. He [means] the world to me. I got a job. My whole life has changed.””

When the social worker interviewed J.B., he was unable to differentiate between the truth and a lie. He did not know how old he was. He was able to identify colors, count from one to 10, and recognize a few letters. He did not know the real reason he was staying at Orangewood. He stated he liked visits with Mother and ““misses mommy so much.”” J.B. stated he wanted to play and live with Mother. During further questioning, J.B. became emotional, stopped drawing, and asked to visit with his mother.

The social worker interviewed the owner of J.B.’s preschool, Susan J. She had known Mother and J.B. for one year. J.B. attended preschool from 7 a.m. to 5:30 p.m., and Mother was always on time to pick him up. She had no concerns to report regarding Mother. Mother requested Susan J. and her husband (the J. family) be assessed for placement of J.B.

The social worker reported that in October, Mother had three negative test results, and missed two scheduled drug tests. She frequently visited J.B. He was always happy to see her. and they were very affectionate with each other. Visits often ended with lots of hugs, kisses, and tearful good-byes. In November, Mother was granted unmonitored visitation with J.B. while he was at Orangewood. The social worker initially concluded the prognosis for this family was “fair” given Mother’s apparent high level of motivation and cooperation. The social worker recommended Mother receive

reunification services. The court agreed, sustained the petition, and set a disposition hearing for January 2007.

J.B. was placed with the J. family. Thereafter, Mother's visits took place at the preschool. Susan J. reported the visits went well, but J.B. was difficult to calm at nights after visits. She noted this was an improvement because in the beginning J.B. would cry constantly for Mother.

Mother was struggling with drug testing, keeping a job, and participating in the other mandated services. She was terminated from counseling and the parenting classes due to her failure to attend. The social worker made arrangements to have Mother reinstated. During the month of February, Mother failed to drug test regularly and once tested positive. Mother regularly visited J.B., and her crying would cause J.B. to become upset. Susan J. opined it appeared Mother wanted J.B. to cry for her. Susan J. noticed Mother did not cry when J.B. cried, but if he was not emotional when she left the visits, Mother would start to cry. She requested that Mother be asked to be more positive and quiet leaving visits. In mid-March, the court declared J.B. a dependent and ordered Mother to participate in reunification services that included counseling, parenting, and drug testing.

In the report prepared in May 2007 for the six-month review hearing, the social worker recommended terminating reunification services. She noted Mother was given six months to demonstrate her commitment to participate in services, however, Mother had to be reinstated in parent education and counseling services for a second time. Counseling services were currently at risk of being terminated once again due to Mother's failure to attend. Mother was only drug testing 21 percent of the time (completing only 11 out of 52 tests). The social worker stated Mother had not demonstrated an ability to stabilize her living conditions. She constantly moved between friends' houses. As a result of this instability, she lost her job. Mother failed to utilize

the resources provided to her, such as sober living homes, homeless shelters, and residential treatment referrals.

The social worker also observed Mother genuinely loves J.B. and has regularly and consistently visited him. However, she concluded, “Despite the mother’s love for the child, the undersigned is concerned about her motivation to follow through with the court-ordered case plan to reunify with [J.B.], evidenced by her lack of efforts.” The social worker questioned if Mother would benefit from continued services, and also expressed concern additional time would only prove to be detrimental to J.B.’s well-being.

The court continued the review hearing, and soon thereafter Mother moved to a sober living home and submitted to random drug tests. She began attending Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) meetings. At the six-month review hearing, the court continued services.

In the October 30, 2007, report prepared for the 12-month review hearing, the social worker commented it was difficult to ascertain Mother’s current circumstances due to her failure to keep in contact. Mother was unemployed and lived with various people for different lengths of time. Mother stayed in the sober living home for only one month. She was terminated from counseling in May, and the therapist suspected Mother was using drugs again. In August, Mother contacted the social worker and admitted she had been drinking and smoking “dope.” The social worker encouraged Mother to apply for a residential treatment facility and referred her to a new therapist. She provided Mother referrals for general relief funds, housing, financial assistance, counseling, and treatment facilities. During this time, Mother had reduced her visits with J.B. She was authorized to have weekly six-hour visits, but was only visiting once every two weeks for two hours. J.B. still appeared to enjoy visits with Mother. Nevertheless, the social worker recommended the termination of services and for the court to schedule a permanency hearing.

The 12-month review hearing was continued to January. In an addendum report, the social worker stated Mother had entered a sober living program in December 2007, at the New Wine Church in Fullerton. It was a six-to nine-month program based on Bible studies. The social worker interviewed Mother at the sober living home, and Mother admitted she had been using drugs every other day for two months.

All of Mother's drug tests from December 14, 2007, to January 22, 2008, were negative. Mother had an appointment to start a parenting class. The social worker concluded that while Mother's recent cooperation towards her case plan was commendable, the social worker was not convinced Mother would continue to progress. The social worker opined, "[M]other's previous actions demonstrate instability, lack of motivation, and a disregard [for] . . . her case plan objective." Mother had not completed any requirements of her case plan or obtained employment. It would not be possible for Mother to complete her latest drug treatment program by the 18-month statutory deadline. At the end of January, the court terminated reunification services and scheduled a permanency hearing for May 2008.

The reports prepared for the May permanency hearing found J.B. was highly adoptable. He was described as an active five-year-old boy who loved to play video games, color, paint, and play. He was well behaved in school and had many friends. The J. family, who had cared for J.B. since he was two years old, expressed love for J.B. They wanted to adopt him. J.B. stated, "'I want to live with mommy . . . and daddy'" and he was referring to the J. family.

The social worker reported that since January, Mother had completed her parenting class, and consistently drug tested. She missed one test on June 30, 2008. She was living with two roommates in the City of Hawaiian Gardens. Her new therapist reported Mother had recently become more reserved in counseling. Mother had ignored referrals for in-resident treatment programs. The social worker concluded it was admirable Mother was visiting J.B. twice a week, but over the past 18 months, she had

failed to demonstrate she was capable of taking care of him or keeping him in a “safe and sane environment.” The hearing was continued to July.

On July 7, the same day of the scheduled permanency hearing, Mother filed a section 388 petition requesting placement of J.B., or in the alternative six more months of services. She claimed her circumstances had changed and the modified order would be in J.B.’s best interests. Mother’s request was based on evidence that since December 2007, she had been in a sober living program, had drug tested, and had completed a parenting class. On June 3, 2008, she graduated from her sober living program. She opined it was in J.B.’s best interest to permit his bond with her to “flourish and grow.” Mother noted J.B. enjoyed visits with her and she should “have a chance to restore [the] family.”

The court heard argument from the parties, and considered the petition, and supporting documents. The court commended Mother for her recent efforts, but noted, “I wish she had done that earlier.” The court concluded Mother’s new found sobriety appeared “to be a work in progress[,] so that it is really more a showing of changing circumstances as opposed to an actual change in circumstances.” The court concluded Mother had had only had a month to discover she could maintain sobriety outside the structure of the sober living home. The court stated the new job, visits with J.B., new roommates, and drug testing showed Mother was “steadily improving” and appeared motivated to work on reunification but did not prove her situation had really changed.

The court also determined the evidence submitted did not prove modifying the order would be in J.B.’s best interests. Mother submitted evidence reunification would be in her best interest as opposed to what in fact was in the best interests of her child. It stated, Mother’s conclusionary statements in this regard were “not buttressed by any evidentiary value[.]” The court added Mother failed to explain why she failed to participate in services for 15 months, which left many questions about her stability, her

ability to maintain sobriety, and her ability to care for J.B. The court denied the section 388 petition.

Later that day, the court began the permanency hearing. It heard testimony from the social worker, Mother, J.B., and the visitation monitor. The court found J.B. was adoptable and terminated Mother's parental rights. Mother appealed.

II

Section 388, subdivision (a), permits a parent whose child is a dependent child of the juvenile court to petition the court for a hearing to change any previous court order, or to terminate the jurisdiction of the court, on the basis of a change of circumstances or new evidence. Subdivision (d) of that statute, as in effect in 2008, provided: "If it appears that the best interests of the child may be promoted by the proposed change of order, . . . or termination of jurisdiction, . . . the court shall order that a hearing be held. . . ."

"A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.]" (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) "[I]f the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition. [Citations.]" (*Ibid.*) "The juvenile court's determination to deny a section 388 petition without a hearing is reviewed for abuse of discretion. [Citations.]" (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.)

Mother argues she made a prima facie showing under section 388 that triggered her right to an evidentiary hearing. She focuses entirely on the court's decision Mother's declaration contained conclusive statements lacking independent evidentiary

support. Mother asserts this statement is not true because her petition was supported by multiple letters and statements written by others and verified her declaration. She is right there was credible evidence supporting her claims to have improved her personal circumstances and to have undergone treatment for her drug addiction. However, we have carefully reviewed the reporter's transcript and conclude the court's comment was directed towards Mother's statements regarding J.B.'s best interests. We agree with the court's conclusion those statements in the declaration lacked evidentiary support.

As noted above, Mother had a two-prong burden to meet. She needed to show, by a preponderance of the evidence, not only changed circumstances, but also that it would be in J.B.'s best interests to return to her. (*In re Zachary G.*, *supra*, 77 Cal.App.4th at p. 806.) Mother stated it would be in J.B.'s best interests to reunite with her because she has (1) remained clean, (2) consistently visited him, and (3) there is an "obvious bond" between them. She stated, "In my opinion, it would be devastating to my child if my parental rights were terminated and he was never able to be in my care again. I am asking for another chance to put my family back together again."

Certainly, the quantity of visits and the affectionate relationship shared between Mother and J.B. was documented in the social worker's reports. However, the social worker's final report, prepared for the permanency hearing, stated J.B. had also strongly bonded to his caretakers and he sought "one-on-one attention with them. He refers to them as mommy and daddy. When asked about where he would like to reside, he replied 'I want to live with mommy . . . and daddy (prospective adoptive [parents]).'"

Consequently, the evidence shows J.B. is bonded to Mother and the J. family. In her declaration, Mother made no effort to show how the proposed modification benefitted J.B. in light of the evidence he is happy and thriving with the J. family. J.B. has known the J. family since he was two years old, he wants to stay with them, and they offer him a permanent, stable, and loving home. Mother is in the beginning stages of resolving a 20-year drug problem. At the time of the hearing, she had

only lived one month outside the sober living home and had a history of relapses. Mother's brief and recent sobriety does not support a finding the requested modification would be in J.B.'s best interests. (See *In re Angel B.* (2002) 97 Cal.App.4th 454, 463.)

Mother cites *In re Aljamie D.* (2000) 84 Cal.App.4th 424, 426, a case where the appellate court held the juvenile court should have held an evidentiary hearing on the section 388 petition. The mother "had completed numerous educational programs and parenting classes, and had tested clean in weekly random drug tests for over two years. She had visited consistently with the children and continued to have a strongly bonded relationship with them." (*Id.* at p. 432.) In addition, in their testimony, both of the "children, ages 9 and 11, repeatedly made clear that their first choice was to live with their mother." (*Id.* at pp. 430, 432.)

The situation before us is distinguishable. Over the nearly two-year dependency period, Mother failed to drug test for substantial periods of time, she visited her child for less time than was allotted, and her successful participation in sobriety programs was a fairly recent development. Although Mother declared she and J.B. have a loving bond, the record also reflects J.B. loves and wants to reside with the J. family. There was no evidence suggesting it was in J.B.'s interests to be removed from the stability of a permanent home, and the mother and father he has known for the past two years, to be returned to Mother who is at risk of returning to a dangerous drug-based lifestyle.

We agree with the juvenile court's conclusion the petition did not demonstrate how a change in the order would be in J.B.'s interests. "At this point in the proceedings, on the eve of the selection and implementation hearing, the [child's] interest in stability was the court's foremost concern, outweighing any interest mother may have in reunification. [Citation.] Mother made no showing how it would be the [child's] best interest to continue reunification services, to remove [him] from [his] comfortable and secure placement to live with mother who has a long history of drug addition The

[child] should not be made to wait indefinitely for mother to become an adequate parent.
[Citation.] There was no abuse of discretion in denying mother's petition.” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 251-252.)

III

The order is affirmed.

O'LEARY, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.